

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN E. WATSON,	§
	§ No. 148, 2009
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 91008490DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 4, 2009

Decided: July 13, 2009

Before **STEELE**, Chief Justice, **BERGER** and **JACOBS**, Justices.

ORDER

This 13th day of July 2009, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) In January 1993, the defendant-appellant, John E. Watson, pleaded guilty to Felony Murder, Intentional Murder, Robbery in the First Degree, and three counts of Possession of a Deadly Weapon During the Commission of a Felony. Watson was sentenced in March 1993 and received two life sentences, plus an additional 33 years at Level V. In August 2007, Watson filed a *pro se* motion for postconviction relief. In July 2008, Watson, represented by counsel, filed an amended motion for

postconviction relief.¹ This is Watson's appeal from the Superior Court's March 4, 2009 order denying his motion for postconviction relief.

(2) Watson's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: (a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and (b) the Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.²

(3) Watson's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Watson's counsel informed Watson of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw, the accompanying brief and the complete transcript. Watson also was informed of his right to supplement his attorney's presentation. Watson responded with a brief that raises two issues for this Court's consideration.

¹ In January 2008, the Superior Court appointed counsel to represent Watson in postconviction proceedings due to the apparent complexity of the issues presented.

² *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

The State has responded to the position taken by Watson’s counsel as well as the issues raised by Watson and has moved to affirm the Superior Court’s judgment.

(4) Watson raises two issues for this Court’s consideration. First, Watson claims that the Superior Court abused its discretion when it denied his postconviction motion as time-barred.³ Specifically, he contends that, because the Superior Court gave him an inaccurate explanation of the “in furtherance of” language of the felony murder statute and incorrectly stated the elements of the offense during his guilty plea colloquy, his guilty plea was involuntary and the “manifest injustice” exception renders the time bar inapplicable.⁴ Second, Watson claims that his appointed counsel asserted an erroneous argument in support of his postconviction motion and requests that the matter be remanded for consideration of the argument Watson originally asserted in his *pro se* motion.⁵

(5) Watson’s first claim is that the Superior Court abused its discretion when it denied his postconviction motion as time-barred. The record reflects that Watson’s conviction became final 30 days after sentence

³ Super. Ct. Crim. R. 61(i) (1).

⁴ Super. Ct. Crim. R. 61(i) (5).

⁵ Watson originally argued that his felony murder charge was erroneous under *Chao v. State*, 931 A.2d 1000 (Del. 2007) and *Williams v. State*, 818 A.2d 906 (Del. 2003). Watson’s appointed counsel argued that the felony murder charge was erroneous under *Chao v. State*, 604 A.2d 1351 (Del. 1992), the governing case at the time Watson entered his guilty plea in January 1993.

was imposed---that is, in April 1993.⁶ Under the version of Rule 61(i) (1) in effect at that time, Watson had 3 years from that date to file his postconviction motion. His postconviction motion was not filed until August 2007 and, therefore, was plainly untimely.

(6) Watson further claims that the “miscarriage of justice” exception of Rule 61(i) (5) applies to his postconviction motion because the Superior Court gave an inaccurate explanation of the “in furtherance of” language of the felony murder statute and misstated the elements of the offense during the plea colloquy. The transcript of Watson’s 1993 plea colloquy reflects that the Superior Court judge stated the following, “Count V charges that . . . you did recklessly or intentionally cause the death of [the victim] in the course of and in furtherance of the commission of the felony of robbery first degree”

(7) While the transcript reflects that the Superior Court erroneously included the word “intentionally” in its recitation of the statute, it is apparent that this inadvertent mistake had no prejudicial effect. Moreover, contrary to Watson’s argument, the Superior Court correctly recited the “in furtherance of” language of the statute. Finally, as outlined in the Superior Court’s findings after Watson’s penalty hearing, the acts Watson admitted to

⁶ Super. Ct. Crim. R. 61(m) (1).

committing in connection with his guilty plea plainly were “in furtherance of” the crime of robbery and, therefore, constituted the crime of felony murder.⁷ As such, we conclude that the “miscarriage of justice” exception is inapplicable to Watson’s claim and that the Superior Court properly denied it as untimely.

(8) Watson’s second claim is that his appointed counsel asserted an erroneous argument in support of his postconviction motion, necessitating a remand to the Superior Court for consideration of the arguments Watson originally raised in his *pro se* motion. Because there is no constitutional right to counsel in postconviction proceedings, Watson’s claim of ineffective assistance of counsel is not viable.⁸ Even if the claim were viable, Watson has failed to demonstrate that any alleged errors on the part of his counsel resulted in prejudice to him.⁹ Specifically, there is no evidence that Watson’s claim would have succeeded had his counsel made the argument he originally asserted in his *pro se* motion. As such, Watson’s second claim also is unavailing.

(9) This Court has reviewed the record carefully and has concluded that Watson’s appeal is wholly without merit and devoid of any arguably

⁷ Del. Code Ann. tit. 11, § 636(a) (2). Specifically, Watson, a crack addict, broke into his aunt’s house late at night to steal money to buy drugs. He beat her to death with a hammer when she woke up during the course of the robbery.

⁸ *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987).

⁹ *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

appealable issue. We also are satisfied that Watson's counsel has made a conscientious effort to examine the record and the law and has properly determined that Watson could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice